

CALIFORNIA PROFESSIONAL FIDUCIARIES BUREAU
PROPOSED REGULATIONS
Title 16, Division 41, California Code of Regulations
Article 4. Code of Ethics

Section 4470. General Principles.

(a) A licensee's fiduciary duties recognized under this Article that are based upon the fiduciary relationship established with the consumer as follows:

- (1) A licensee's relationship to a conservatee when acting as a court appointed conservator;
- (2) A licensee's relationship to a ward when acting as a court appointed guardian;
- (3) A licensee's relationship to a principal when acting under a durable power of attorney; and,
- (4) A licensee's relationship to a beneficiary when acting as a trustee.

(b) The licensee shall comply with all local, state, and federal laws and applicable rules, regulations, and policies as a minimum guide for the fulfillment of the duties recognized under this Article.

(c) The licensee shall protect all rights of the consumer that relate to licensee's duties to the consumer.

(d) The licensee shall refrain from representing the consumer in areas outside the scope of legal authority.

(e) The licensee shall seek competent professional advice whenever appropriate for the benefit of the consumer.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4472. Decision Standards.

(a) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care or for finances.

(b) The licensee shall provide the consumer with every reasonable opportunity to exercise those individual choices that the consumer is capable of exercising.

(c) When the licensee is making decisions on behalf of the consumer, the licensee shall make decisions in accordance with the desires of the consumer, past or current, unless doing so

would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate.

(d) When the desires of the consumer, past or current, cannot be ascertained or if exercising them would violate the licensee's duties to the consumer or impose an unreasonable expense on the estate, the licensee shall make decisions that are in the best interest of the consumer.

(e) Decisions made on behalf of the consumer shall take into consideration all known ethnic, religious, social and cultural values of the consumer whenever possible.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4474. Confidentiality.

(a) The licensee shall closely guard against the disclosure of personal information regarding the consumer except when such disclosure is required by law or necessary to protect the best interest of the consumer.

(b) Disclosure of consumer information shall be limited to what is necessary and relevant to the issue being addressed.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4476. Conflict of Interest.

(a) The licensee shall avoid actual conflicts of interest, and consistent with the licensee's fiduciary duties, shall not engage in any activity where there is the reasonable appearance of a conflict of interest.

(b) The licensee shall not engage in any personal, business, or professional interest or relationship that is or reasonably could be perceived as self-serving or adverse to the best interest of the consumer.

(c) The licensee shall protect the rights of the consumer and the estate against infringement by third parties.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4478. Residential Placement.

(a) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care.

(b) The licensee shall be informed and aware of the options and alternatives available for establishing the consumer's place of residence.

(c) The licensee shall make decisions in accordance with the desires of the consumer, past or current, when establishing the consumer's residence, unless doing so would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate.

(d) When the desires of the consumer, past or current, cannot be ascertained or if exercising them would violate the licensee's duties to the consumer or impose an unreasonable expense on the estate, the licensee shall select the least restrictive and appropriate residence that is available and necessary to meet the needs of the consumer that are in the best interest of the consumer.

(e) The licensee shall not remove the consumer from his or her home or separate the consumer from family and friends unless such removal is appropriate and in the best interest of the consumer.

(f) The licensee shall seek professional evaluations and assessments whenever appropriate to determine whether the current or proposed placement of the consumer represents the least restrictive and appropriate residence that is available and necessary to meet the needs of the consumer that are in the best interest of the consumer.

(g) The licensee shall monitor the placement of the consumer on an on-going basis to ensure its continued appropriateness, and shall make changes whenever necessary that are in the best interest of the consumer.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4480. Care, Treatment and Services.

(a) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care.

(b) The licensee shall protect the personal and pecuniary interests of the consumer.

(c) The licensee shall make decisions in accordance with the desires of the consumer, past or current, regarding all care, treatment, or services, unless doing so would violate the licensee's duties to the consumer or impose an unreasonable expense on the estate.

(d) When the desires of the consumer, past or current, cannot be ascertained or if exercising them would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall make decisions regarding care, treatment, and services that are in the best interest of the consumer.

(e) The licensee shall be cognizant of his or her own limitations of knowledge, and shall seek professional evaluations and assessments whenever appropriate to determine whether the current or proposed care, treatment, and services are appropriate and in the best interest of the consumer.

(f) The licensee shall monitor the care, treatment, and services on an on-going basis to ensure its continued appropriateness, and shall make changes whenever necessary that are in the best interest of the consumer.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4482. Management of the Estate.

(a) The licensee shall protect the assets of the estate.

(b) The licensee shall pursue claims against others when it reasonably appears to be in the best interest of the consumer or the estate to do so.

(c) The licensee shall defend against actions or claims against the estate when it reasonably appears to be in the best interest of the consumer or the estate to do so.

(d) The licensee shall incur expenses that are appropriate to the estate, in relation to the assets, overall investment strategy, purpose, and other relevant information and circumstances when investing and managing estate assets.

(e) Consistent with the licensee's fiduciary duties, the licensee shall manage the assets of the estate in the best interest of the consumer.

(f) The licensee shall manage the estate with prudence, care and judgment, maintaining detailed fiduciary records as required by law.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4484. Limitation or Elimination of Fiduciary Powers; Restoration of Capacity; Termination of Fiduciary Relationship.

(a) When appropriate and in the best interest of the conservatee, licensed conservators under the Act shall not oppose and, in appropriate circumstances shall seek, limitations on the licensee's powers or authority to act, elimination of unnecessary or no-longer necessary powers, or termination of the proceeding and restoration of the conservatee's legal capacity.

(b) In all fiduciary relationships subject to the Act, when appropriate and in the best interest of consumer, the licensee shall take all reasonable steps to facilitate termination of the fiduciary relationship.

(c) In all fiduciary relationships subject to the Act, the licensee shall not oppose or interfere with efforts to terminate the licensee's fiduciary relationship with a consumer for any reason other than as necessary or appropriate to protect or promote the best interest of that consumer.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

The bureau consulted with several organizations in the development of the Code of Ethics, including the National Guardianship Association, a nationwide voluntary association of professional and family fiduciaries, guardians, and allied professionals. The National Guardianship Association's Standards of Practice and Code of Ethics, titled *A Model Code of Ethics for Guardians* authored by Michael D. Casasanto, Mitchell Simon and Judith Roman were significant sources of inspiration for many of the provisions of this article. The bureau wishes to express its particular appreciation for the assistance of the National Guardianship Association on this project.